

REMARKS

The claims remaining in the present application are Claims 1-23. Claims 1, 12, 15, 19 and 20 have amended. No new matter has been added as a result of this amendment.

CLAIM REJECTIONS

35 U.S.C. 103(a)

Claims 1-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill, U.S. Patent Publication No. 2003/0182414 A1 in view of Olarig et al, United States Patent No. 6,009,524, hereinafter referred to as Olarig. The rejection is respectfully traversed for the reasons below.

Claim 1 recites:

A remote upgrade method comprising:  
performing a power up boot process;  
monitoring for an indication of available upgrade information remotely, wherein said upgrade information is boot information, said indication of available upgrade information from a source of said available upgrade information;  
engaging in an upgrade setup process automatically in which an upgrade indication variable is set to indicate an upgrade is required when said indication of available update information is received and said upgrade indication variable continues to indicate an upgrade is required until an upgrade is successfully completed;  
and  
an update reboot process is executed.

Applicants submit that neither O'Neill nor Olarig, alone or in combination, teach or suggest "monitoring for an indication of available upgrade information remotely, wherein said upgrade information is boot information, said indication of available upgrade information from a source of said available upgrade information," as claimed. Therefore, Claim 1 is not rendered obvious by O'Neill in view of Olarig.

Neither O'Neill nor Olarig teach or suggest an indicator provided by the source of the upgrade information. Therefore, the combination fails to teach or suggest "said indication of available upgrade information from a source of said available upgrade information," as claimed.

O'Neill fails to teach or suggest, "monitoring for an indication ... from a source of said upgrade information," for the following reasons. O'Neill, as understood by Applicants, may suggest a system and method for updating information in which the updated information may be stored in an update store. A client device then contacts the update store and an update generator compares the code in the client device with code retained in the update store. Upon comparison of the two code versions, the update generator generates an update code version based on the differences between the two code versions (paragraphs 0040, 0042 and 0043).

Applicants further understand that O'Neill may suggest a server array that may be able to store a plurality of update packages. The update server array

receives an identify confirmation and a request to update from a client device (paragraph 0044-0047).

Applicants also understand O'Neill to suggest the update server array that may create a manifest including a list of update packages. Upon client device recognition, the server array may transfer the server manifest to the client device which then reviews the server manifest and then requests the update package appropriate for the particular client device (paragraphs 0048-0050).

O'Neill, as understood by Applicants, may additionally suggest a collector which collects information and updates for other devices capable of being updated, and determines which client devices require updating, as disclosed in paragraph 0051.

Continuing, Applicants understand O'Neill to suggest a client side update determination in which a client device compares an update manifest and then requests the appropriate update package and a server side update determination in which the server performs the comparison and then transfers the appropriate update package to the client device (paragraphs 0056-0061).

Further, O'Neill, as understood by Applicants, discloses in Figure 2A and Figure 2B (see also related paragraphs in O'Neill reference) processes for updating in which the client device, after establishing communication with an update server, or update server array, polls a manifest of update packages and if the client device

determines an update package is appropriate, the client device requests the update package from the update server (paragraphs 0063-0076).

Applicants further understand O'Neill to suggest an update agent that responsible for processing update instructions and a download agent for performing operations related to communicating with the client devices (paragraph 0118-0123).

However, Applicants respectfully assert that while O'Neill may suggest an update server, an update server array, an update generator, an update store, an update agent and a download agent, nowhere does O'Neill suggest, teach or describe an update server, an update server array, an update generator, an update store, an update agent or a download agent generating an update indicator indicating the availability of update information, as is claimed.

Therefore, Applicants respectfully assert that nowhere does O'Neill suggest, teach or describe the claimed limitations of Claim 1.

With regard to Olarig, Applicants understand Olarig to suggest a method for flashing of a bios memory. As understood by Applicants, Olarig suggests an administrator obtains the upgrade software and loads it into the admin node. Then administrator verifies that it contains a proper vendor signature, adds his own signature and transmits the upgrade software to a client device where it is installed.

However, as understood by Applicants, Olarig does not suggest, teach or describe the source of the update software generating an indicator indicating the Serial No. 10/080,931 Art Unit 2193  
3COM-3645.DSP.US.P - 10 - Examiner: Roche, Trenton J.

availability of an update or upgrade package and / or software, as is recited in Claim 1. Thus, Applicants respectfully assert that Olarig does not suggest, teach or describe the claimed limitations nor does Olarig remedy the shortcomings of O'Neill.

Accordingly, Applicants respectfully assert that neither O'Neill nor Olarig, alone or in combination, do not suggest, teach or describe the limitations as recited in Claim 1. Claims 2-11 depend from Claim 1. Therefore, allowance of Claims 1-11 is respectfully solicited.

Accordingly, Applicants respectfully assert that neither O'Neill nor Olarig, alone or in combination, do not suggest, teach or describe the limitations as recited in Claim 12, which comprises limitations similar to Claim 1. Claims 13-18 depend from Claim 12. Therefore, allowance of Claims 12-18 is respectfully solicited.

Accordingly, Applicants respectfully assert that neither O'Neill nor Olarig, alone or in combination, do not suggest, teach or describe the limitations as recited in Claim 19, which comprises limitations similar to Claim 1. Claims 20-23 depend from Claim 19. Therefore, allowance of Claims 19-23 is respectfully solicited.

As Claim 1, Claim 12 and Claim 19 comprise similar limitations, Applicants respectfully assert that Claims 1, 12 and 19 are patentable over O'Neill in view of Olarig. Since Claims 1, 12 and 19 are believed to be in a condition for allowance, Applicants respectfully request that the rejection of Claims 1, 12 and 19 under 35

USC 103(a) be withdrawn and that Claims 1, 12 and 19 be allowed. Therefore,  
allowance of Claims 1-23 is respectfully solicited.

CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected Claims is requested. Based on the amendments and arguments presented above, it is respectfully submitted that Claims 1-23 overcome the rejections of record. Therefore, allowance of Claims 1-23 is earnestly solicited.

Should the Examiner have a question regarding the instant response, the Applicants invites the Examiner to contact the Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,  
WAGNER, MURABITO & HAO LLP

Dated: 12/7/, 2005

  
John P. Wagner  
Registration No. 35,398

Address: WAGNER, MURABITO & HAO LLP  
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## Amendment Transmittal

Applicant: CHHABRA et al. Filing Date: 02/21/2002  
Docket No. 3COM-3645.DSD.US.P Serial No. 10/080,931  
Title: A ROBUST REMOTE FLASH ROM UPGRADE SYSTEM  
AND METHOD

Sir:

Please acknowledge receipt of the following:

Check # 3509 in the amount of \$ 120.00

Amendment Transmittal (2 pgs. + copy)

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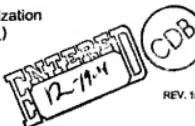
Certificate of Mailing

Ext. of Time

Deposit Account Authorization

Amendment (No. pgs. 13)

Submitted: 12/07/2005



REV. 1/05 WMH

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SAN JOSE, CA 95113

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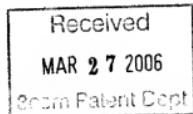


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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/080,931      | 02/21/2002  | Pankaj Chhabra       | 3645.US.P           | 6564             |

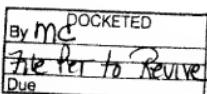
56436 7590 03/23/2006  
3COM CORPORATION  
350 CAMPUS DRIVE  
MARLBOROUGH, MA 01752-3064



|                  |              |
|------------------|--------------|
| EXAMINER         |              |
| ROCHE, TRENTON J |              |
| ART UNIT         | PAPER NUMBER |
| 2193             |              |

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



|                              |                              |                     |  |
|------------------------------|------------------------------|---------------------|--|
| <b>Notice of Abandonment</b> | <b>Application No.</b>       | <b>Applicant(s)</b> |  |
|                              | 10/080,931                   | CHHABRA ET AL.      |  |
|                              | Examiner<br>Trenton J. Roche | Art Unit<br>2193    |  |

*– The MAILING DATE of this communication appears on the cover sheet with the correspondence address–*

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 11 August 2005.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
  
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTO-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTO-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.
 

The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
  
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
  
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
  
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
  
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
  
7.  The reason(s) below:

The Office received a Power of Attorney filed 31 January 2006, however, no other filing constituting a proper reply to the Office letter of 11 August 2005 had been received by the Office.

*done. Cr.*

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



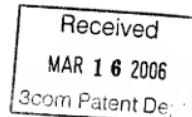
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|----------------------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.            | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/080,931                 | 02/21/2002  | Pankaj Chhabra       | 3645.U.S.P          | 6564             |
| 56436                      | 7590        | 03/13/2006           | EXAMINER            |                  |
| 3COM CORPORATION           |             |                      | ROCHE, TRENTON J    |                  |
| 350 CAMPUS DRIVE           |             |                      |                     |                  |
| MARLBOROUGH, MA 01752-3064 |             |                      | ART UNIT            | PAPER NUMBER     |
|                            |             |                      | 2193                |                  |

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Interview Summary

|                |
|----------------|
| By MC DOCKETED |
|                |
| Due 4/13/06    |

| <b>Interview Summary</b> | Application No.  | Applicant(s)   |  |
|--------------------------|------------------|----------------|--|
|                          | 10/080,931       | CHHABRA ET AL. |  |
|                          | Examiner         | Art Unit       |  |
|                          | Trenton J. Roche | 2193           |  |

All participants (applicant, applicant's representative, PTO personnel):

(1) Trenton J. Roche. (3) \_\_\_\_\_.

(2) Andrew J. Curtin, Reg. No. 48,485. (4) \_\_\_\_\_.

Date of Interview: 08 March 2006.

Type: a) Telephonic b) Video Conference  
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: N/A.

Identification of prior art discussed: N/A.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.



Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135 (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed,
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicants' representative contacted the Examiner and inquired whether the Office had received a response to the final rejection of 11 August 2005. The Examiner noted that the last correspondence received was a Power of Attorney filed 31 January 2006, but no other reply had been received. Applicants' representative indicated that they had sent in a reply, which must have been lost in the mail. As such, the Examiner will abandon the application and advised the Applicants' representative to file a petition to withdrawal holding of abandonment, along with the response and proof of prior filing.

### Amendment Transmittal

Applicant: CHHABRA et al. Filing Date: 02/21/2002  
Docket No. 3COM-3645.DSD.US.P Serial No. 10/080,931  
Title: A ROBUST REMOTE FLASH ROM UPGRADE SYSTEM  
AND METHOD

Sir:

Please acknowledge receipt of the following:

Check # 3509 in the amount of \$ 120.00  
 Amendment Transmittal (2 pgs. + copy)  
Including:  
 Certificate of Mailing  
 Ext. of Time  
 Deposit Account Authorization  
 Amendment (No. pgs 13)

CDB



DOCKETED

Submitted: 12/07/2005 Date: 12/12/2005 Initials: / REV. 105 WMH

## TERMINAL DISCLAIMER TO ACCOMPANY PETITION

Docket Number (Optional)  
3645 US

In re Application of: Pankaj Chhabra, et al.

Application Number: 10/080,931

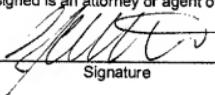
Filed: February 21, 2002

For: A ROBUST REMOTE FLASH ROM UPGRADE SYSTEM AND METHOD

The owner\*, 3Com Corporation of 100 percent interest in the above-identified application hereby disclaims a terminal part of the term of any patent granted the above-identified application equivalent to: (1) if the above-identified application is a design application, the period of abandonment of the above-identified application, and (2) if the above-identified application is a utility or plant application, the lesser of: (a) the period of abandonment of the application; or (b) the period extending beyond twenty years from the date on which the above-identified application was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed. This disclaimer also applies to any patent granted on a utility or plant application filed before June 8, 1995, or a design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. This disclaimer is binding upon the grantee, and its successors or assigns.

Check either box 1 or 2 below, if appropriate.

- For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.
- The undersigned is an attorney or agent of record. Registration Number 48,485



Signature

1-23-2007

Date

Andrew J. Curtin

508-323-1330

Typed or Printed Name

Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) included.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

\* Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/65 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.